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TOYOTA MOTOR SALES, U.S.A., INC. and

TOYOTA MOTOR NORTH AMERICA, INC.

## UNITED STATES DISTRICT COURT

## NORTHERN DISTRICT OF CALIFORNIA

COLE COLEMAN, BRUCE COLETTA,  
DAVID DIORIO, ROBERT JACOBSON-  
DUTEIL, BRIANNA LEE, CRISTIN  
TROSSEN, and MICHELE WILLIAMS,  
individually, and on behalf of all others  
similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A., INC., a  
California corporation; and TOYOTA MOTOR  
NORTH AMERICA, INC., a California  
corporation,

Defendants.

Case No.: 3:20-cv-01663-EMC

Assigned to the Hon. Edward M. Chen

**DEFENDANTS TOYOTA MOTOR  
SALES, U.S.A., INC. AND TOYOTA  
MOTOR NORTH AMERICA, INC.'S  
NOTICE OF MOTION AND MOTION  
TO DISMISS THE COMPLAINT**

[Filed concurrently with Memorandum of  
Points and Authorities; Request for Judicial  
Notice; Declaration of Jahmy S. Graham;  
Declaration of Robert M. Landis; [Proposed]  
Order]

**Date:** September 3, 2020**Time:** 1:30 p.m.**Ctrm:** 5

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE THAT** on September 3, 2020, at 1:30 p.m., or as soon thereafter as this may be heard in Courtroom 5 of the above-entitled Court located at 450 Golden Gate Avenue, San Francisco, California 94102, the Honorable Edward M. Chen presiding, Defendants Toyota Motor Sales, U.S.A., Inc. (“TMS”) and Toyota Motor North America, Inc. (“TMNA”) will and hereby do move the Court for an order dismissing Plaintiffs Cole Coleman, Bruce Coletta, David DiOrio, Robert Jacobson-Duteil, Brianna Lee, Cristin Trosien, and Michele Williams’s (collectively, “Plaintiffs”) Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 9(b).

TMS and TMNA move to dismiss the following claims because Plaintiffs lack Article III standing and fail to state a claim upon which relief can be granted: (1) Violation of the California Consumer Legal Remedies Act; (2) Violation of the California Unfair Competition Law; (3) Breach of Implied Warranty of Merchantability under the Song-Beverly Consumer Warranty Act; and (4) Fraudulent Concealment. Furthermore, Plaintiffs lack standing for their requests for injunctive and declaratory relief. Plaintiffs have also failed to sufficiently plead nationwide class allegations.

**STATEMENT OF ISSUES TO BE DECIDED PER CIVIL L.R. 7-4(A)(3)**

1. Whether the Complaint should be dismissed under Rule 12(b)(1) because Plaintiffs lack Article III standing.

2. Whether the Complaint should be dismissed under Rule 12(b)(6) and 9(b) for failure to state a claim.

*First*, Plaintiffs lack Article III standing to bring their claims because they have alleged a hypothetical and conjectural economic injury based solely upon a speculative risk of future harm, not a concrete and particularized current injury, which is insufficient to establish the requisite Article III standing.

*Second*, Plaintiff Lee cannot assert a breach of the implied warranty claim. Plaintiffs concede that the subject vehicles are able to travel at least 400 miles on a tank of gas and there are no allegations that otherwise establish that Plaintiff Lee’s vehicle is not fit for its ordinary purpose of providing transportation, as required under California’s Song-Beverly Consumer Warranty Act.

1        Third, Plaintiffs fail to identify an actionable misrepresentation made by TMS and TMNA  
2 regarding the fuel tank capacity or fuel economy of their vehicles. They also fall short of alleging  
3 the “who, what, when, where, and how” required under Rule 9(b) to state their fraud-based claims.

4        Fourth, Plaintiffs’ fraudulent concealment claims under Arizona, California, Connecticut,  
5 Florida, Michigan, Missouri, and New Jersey law, and Plaintiff Lee’s California consumer  
6 protection claims based on an omission theory fail because they do not identify a material fact  
7 omitted by TMS or TMNA about their vehicles and further fail to sufficiently plead that TMS and  
8 TMNA had pre-sale knowledge of the alleged defect and a duty to disclose any allegedly omitted  
9 material fact.

10       Fifth, Plaintiff Lee has not otherwise alleged a “fraudulent,” “unlawful,” or “unfair” claim  
11 under California’s Unfair Competition Law.

12       Sixth, Plaintiffs’ fraudulent concealment claims under the laws of Arizona, Connecticut,  
13 Michigan, Missouri, and New Jersey fail for additional and Plaintiff-specific reasons.

14       Seventh, Plaintiffs lack standing for their requests for injunctive and declaratory relief  
15 because they have not alleged a likelihood of future harm.

16       Eighth, Plaintiffs’ nationwide class allegations should be dismissed at the pleading stage  
17 because Plaintiffs do not have standing to represent consumers in other states under their states’  
18 laws, nor can such laws be applied extraterritorially to residents in other states.

19       This Motion is based on this Notice of Motion and Motion to Dismiss, the accompanying  
20 Memorandum of Points and Authorities, the Request for Judicial Notice, and the Declarations of  
21 Robert M. Landis and Jahmy S. Graham and the exhibits attached thereto, as well as all other  
22 matters that may be judicially noticed, the files and records in this case, and any oral or documentary  
23 evidence that may be adduced at the hearing on this matter.

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1 Dated: June 17, 2020

NELSON MULLINS RILEY & SCARBOROUGH LLP

2  
3 /s/ Jahmy S. Graham

Jahmy S. Graham

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TOYOTA MOTOR SALES, U.S.A., INC. and

TOYOTA MOTOR NORTH AMERICA, INC.

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ATTORNEYS AT LAW  
LOS ANGELES

**CERTIFICATE OF SERVICE**

I hereby certify that on June 17, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and I served a copy of the foregoing pleading on all counsel for all parties, via the CM/ECF system and/or mailing same by United States Mail, properly addressed, and first class postage prepaid, to all counsel of record in this matter.

By: /s/ Jahmy S. Graham  
Jahmy S. Graham